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Child victims: stamping out all forms of violence, exploitation and abuse

Reply to Recommendation[1]: Recommendation 1778 (2007)
Committee of Ministers

1. The Committee of Ministers has studied with interest Parliamentary Assembly Recommendation 1778 (2007) on child victims: stamping out all forms of violence, exploitation and abuse, and Resolution 1530 (2007) related thereto. It has transmitted it to the governments of member states and to relevant committees[2] for information, the comments of which have been taken into consideration in the present reply.

2. The Committee of Ministers wishes to stress the importance it attaches to this issue and its commitment to protect children from all forms of violence, exploitation and abuse. In the Council of Europe member states taken as a whole, the population below the age of 18 is around 155 million individuals. It is a population that is particularly vulnerable, and often defenceless when subject to violence. The Council of Europe has long been concerned with the protection of children and the priority to be given to the protection of children was duly reflected in the Warsaw Action Plan, of which the relevant points are being implemented through diverse and concrete activities. One prime example of this commitment is the launching of the programme Building a Europe for and with children in April 2006.

3. The objectives of the programme largely respond to the Assembly's recommendations to the Committee of Ministers. It will seek to ensure respect for children's rights throughout all countries in Europe and address social, legal, health and educational dimensions of the various forms of violence against children wherever they take place. In particular, it will help countries to set up strategies for the prevention of violence against children, improving systems that facilitate reporting through childfriendly services, support to families and early identification and professional documentation of cases. It will also help provide authorities and professionals with the ability to respond quickly and adequately to reported violence. The programme will also campaign against all forms of violence against children and in particular invest in awareness-raising, education, training and capacity building to promote a culture of non-violence and reach a zero level of tolerance. The programme will work with and through decision makers and all players concerned, including national governments and civil society and through the meaningful participation of children. The programme calls for the development of partnerships with children, parents, private companies, professional networks and the media.

4. Special efforts flowing from the programme are being made to eradicate sexual abuse and exploitation of children. A major step forward in this regard is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted by the Committee of Ministers on 12 July 2007 and which was opened for signature on the occasion of the 28th Conference of European Ministers of Justice (25 26 October 2007, Lanzarote, Spain). The new convention will provide for a comprehensive

1. Adopted by the Committee of Ministers on 6 February 2008, at the 1017th meeting of the Ministers' Deputies.
2. The European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the Steering Committee on Human Rights (CDDH), the Steering Committee on Social Cohesion (CDCS), the Governmental Committee of the European Social Charter, the Steering Committee for Education (CDED), the European Steering Committee for Youth (CDEJ), the Committee on the Rehabilitation and Integration of People with Disabilities (CD-P-RR) and the European Committee on Migration (CDMG).

protection of children against sexual exploitation and sexual abuse, consolidating existing standards in this field by covering the issues of preventive and protective measures, substantive criminal law, investigation, prosecution and procedural law (including child-friendly procedures), exchange of information between states parties and international co-operation. It also aims at filling gaps and ensuring coherent and equal protection for all children by establishing clear common standards and definitions in this field which must be applicable in all states parties to it, in particular by harmonising criminal law and other relevant measures. The convention will significantly contribute to the regional and international fight against violence, exploitation and abuse of children.

5. The Committee of Ministers supports the call of the Parliamentary Assembly to member states to sign and ratify existing international and European legal instruments relating to the protection of children and to the fight against all forms of violence, exploitation or abuse of children, as enumerated in the recommendation and its Resolution 1530 (2007). The Committee of Ministers also recalls the case law of the European Court of Human Rights concerning children's rights and in particular the right of children to be protected against violence, as well as national case law implementing the European Convention on Human Rights and other international instruments. In this respect, the Assembly's attention is drawn to the relevant comments by the Steering Committee on Human Rights (CDDH) on the Assembly recommendation under consideration which are appended herewith (see Appendix 1).

6. In addition to the European Convention on Human Rights, the revised European Social Charter[3] (and the relevant case law) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee of Ministers draws particular attention to the Council of Europe Conventions on Contact concerning Children (ETS No. 192),[4] on Cybercrime (ETS No. 185)[5] and on Action against Trafficking in Human Beings (CETS No. 197).[6] The Committee of Ministers shares the Assembly's concerns on the difficult access of children to monitoring mechanisms. The programme Building a Europe for and with children is deploying particular efforts to improve access to information (decisions, observations, recommendations, reports) issued by the various monitoring systems. The recent Conference on International Justice for Children (17-18 September 2007, Strasbourg) explored the principles of child-friendly justice at international level.

7. The European Convention on the Exercise of Children's Rights (ETS No. 160)[7] aims to protect the best interests of children by providing a number of procedural measures to allow children to exercise their rights, and to protect them from cruel or degrading treatment. This convention also facilitates the implementation of the United Nations Convention on the Rights of the Child. The Committee of Ministers recalls that the United Nations convention remains the cornerstone of child protection in international law. It has been ratified by all member states who are all expected to develop national action plans to ensure its full implementation. In this respect, the Committee of Ministers has taken note of the CDCJ's readiness to possibly examine the feasibility of elaborating an appropriate instrument, containing specific measures to facilitate the implementation of the United Nations Convention on the Rights of the Child (see Appendix 2). It requests the CDCJ to bear this possibility in mind in the preparations and possible follow-up to the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote, Spain) which covered the issue of access to justice for vulnerable groups, including children. This approach is an alternative one to that requested in paragraph 3 of the recommendation, where the Committee of Ministers shares the view expressed by the CDCJ that it would be premature at this stage to initiate drafting a new, legally binding instrument in this field. However, it is fully in line with the commitment in the Warsaw Action Plan "to fully comply with the obligations of the United Nations Convention on the Rights of the Child".

8. The Committee of Ministers also considers it opportune to highlight the important role of independent ombudspersons or commissioners for children, and the creation of which has been encouraged by the Council of Europe and by the UN Committee of the Rights of the Child, in particular to monitor and assist in ensuring

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3. Article 7 of the Charter provides for the right of children and young persons to protection and Article 17 for the rights of children and young persons to social, legal and economic protection. The 1995 Additional Protocol provides for a system of collective complaints which allows international non-governmental organisations to defend the rights of children in an effective manner.

4. As of 13 November 2007, the Convention on Contact concerning Children, which entered into force on 1 September 2005, had been ratified by five member states and signed by a further 12 member states.

5. As of 13 November 2007, the Convention on Cybercrime, which entered into force on 1 July 2004, had been ratified by 20 member states and one nonmember state and signed by 19 member states and three non-member states.

6. As of 13 November 2007, the Convention on Action against Trafficking in Human Beings, which will enter into force on 1 February 2008, had been ratified by 10 member states and signed by 27 member states.

7. As of 13 November 2007, the European Convention on the Exercise of Children's Rights, which entered into force on 1 July 2000, had been ratified by 12 member states and signed by a further 12 member states.

full implementation of the UN Convention on the Rights of the Child and of creating child-friendly societies. A number of such ombudspersons or similar independent institutions already exist in Council of Europe member states and other member states are currently considering the possibility of creating such an institution.

9. The Committee of Ministers also draws the Assembly's attention to an analysis currently being carried out, in compliance with Resolution No. 1 adopted at the 27th Conference of European Ministers of Justice, on legislation and practices of member states concerning civil, administrative and other remedies available to victims of crime in order to identify good practices, *inter alia,* which meet the specific needs of vulnerable victims such as children with a view to making proposals to the Committee of Ministers for possible follow up action.

10. The Committee of Ministers also underlines the fact that amongst children, those with disabilities are more particularly vulnerable to violence and abuse. It recalls, *inter alia*, in this context its Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse together with the accompanying report, its reply to Parliamentary Recommendation 1698 (2005) on the rights of children in institutions and the Council of Europe Disability Action Plan (2006-15) which will address specific problems faced by children and young people.

11. The Committee of Ministers highlights the importance of preventive action when addressing the issue of violence against children. In this respect it underlines the work of the European Committee for Social Cohesion (CDCS), which considers difficult situations that facilitate violence such as the case of children without parental care (including children living in institutions, social orphans and street children), children living in suburban areas, children and families at risk of social exclusion and the marginalisation of migrant families. A core element aims to eliminate corporal punishment and to raise awareness on the issue. The Committee of Ministers recalls its Recommendation Rec(2006)19 to member states on policy to support positive parenting, which aims to create the necessary conditions for positive and non-violent parenting. Work in this field will be followed up by a new subordinate Committee of the CDCS on Social Policy for Families and Children, recently set up by the Committee of Ministers.

12. With specific reference to paragraph 2.2, the Committee of Ministers points out that at the 22nd Session of the Standing Conference of European Ministers of Education (4-5 May 2007), the theme "Children's rights in an educational perspective" was discussed in order to promote children's rights, including in the context of teacher training. The Committee of Ministers shares the view of the Parliamentary Assembly, as is the case for the Steering Committee for Education, that teachers need to be adequately trained so that they can not only teach children's rights but also ensure that these rights are respected at school and avoid discrimination and all other breaches of these rights.

13. The Committee of Ministers shares the view of the Parliamentary Assembly expressed in paragraph 2.3 as regards the need to reinforce co-operation and develop partnerships at international level. Examples of the Council of Europe efforts in this sense are the role played in the preparation and the follow up of the UN SG study on violence against children, as well as the reinforced cooperation developed with UNICEF (consolidated by the conclusion of a joint declaration in January 2007), OHCHR, the European Commission and major NGOs. The need to share information with a view to dismantle child exploitation networks has been addressed in both the Convention on Action against Trafficking in Human Beings and the new Convention on the Protection of Children against Sexual Abuse and Exploitation (Chapter IX).

14. Finally, the Committee of Ministers remains committed to improve children's participation at local, national and international levels and welcomes the preparation within the Assembly of a report on this issue. All recent legal instruments in the field of children's rights incorporate the participation dimension and children have actively contributed to and participated in major Council of Europe events. The outcome of an experts and partners meeting organised by the Council of Europe in December 2006 is expected to inspire future Council of Europe work in this respect.

Appendix 1 – Comments by the Steering Committee for Human Rights (CDDH) on Parliamentary Assembly Recommendation 1778 (2007)

1. The CDDH welcomes Parliamentary Assembly Recommendation 1778 (2007) and Resolution 1530 (2007) on child victims: stamping out all forms of violence, exploitation and abuse, adopted on 23 January 2007, which deals with a very serious problem in the various countries which involves an increasing number of victims.

2. In paragraph 4 of the recommendation, the Assembly asks the Committee of Ministers to instruct the relevant governmental committees to propose measures to facilitate and optimise children's access to the appeals and complaints procedures for upholding the rights guaranteed to them by the Council of Europe's existing legal instruments, in particular the European Convention on Human Rights (ECHR) and the revised European Social Charter (ESC).

3. The ECHR enshrines basic human rights and fundamental freedoms for everyone within the jurisdiction of any Council of Europe member state. The Convention does not expressly contain provisions specifically aimed at protecting the rights of the child with the exception of Article 5.1.*d*, which, under certain circumstances, expressly authorises lawful detention of minors. However, many cases have been brought before the European Court of Human Rights concerning children's rights and in particular the right of children to be protected against violence. This case law is relevant where violence against children, including sexual exploitation, is concerned.

4. It must be pointed out that in cases concerning grave violations, such as those covered under Article 3 (interdiction of torture), the Court shows equal diligence regarding all victims. This being said, it has held that in assessing the severity of the punishment or treatment endured by a person, regard should be had to the victim's personal characteristics, notably his/her age.[8]

5. Other judgments[9] in the same line of thought illustrate that the positive obligation to protect children under Article 3 extends beyond imposing criminal sanctions for such ill-treatment and requires states to take reasonable steps to ensure children effective protection and to take reasonable measures to prevent ill treatment of which the authorities had or ought to have had knowledge[10]. Moreover, the Court has recently held that a state violated its positive obligations to take requisite measures and precautions to protect a child by deporting a young applicant who was unaccompanied by her parents and had no one to look after her, which caused her "extreme anxiety and demonstrated such a total lack of humanity towards someone of her age and in her situation".[11] In the same case, the Court also concluded that there had been a violation of Article 3 as a result of the applicant's detention, during two months, in a closed centre intended for illegal immigrants that was not adapted to her young age.

6. With regard to Article 4 of the Convention, it is also interesting to note that the Court found a violation in a case concerning a foreign minor, who was obliged by a couple to work as a non-remunerated domestic worker for several years.[12]

7. It has also to be recalled that the meaning of Article 8 (right to respect for private and family life) has been given a broad interpretation in order to protect the physical and psychological integrity of the child. Thus, in one judgment,[13] the Court established the principle that physical integrity is a component of respect for private life under Article 8. The Court stated that there is a positive obligation of respect for private life, the nature of which depends on the particular aspect of the private life in question. In the context of sexual abuse, a criminal system leading to the punishment of the perpetrator was requested. In another judgment,[14] the Court stated that it attaches particular importance to the best interests of the child and considered that the parent cannot, under Article 8, be entitled to allow measures to be taken that would harm the child's health and development.

8. It is to be noted that a positive obligation for states to undertake effective inquiries also ensues from Articles 3 and 8 of the Convention in the event of an alleged breach of physical integrity or ill-treatment inflicted on children.[15] This obligation, moreover, also ensues from Article 13 of the Convention.[16]

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8. *Bati and Others v. Turkey*, judgment of 3 June 2004, and *Rivas v. France*, judgment of 1 April 2004.
9. E and Others v. the United Kingdom, judgment of 26 November 2002, and M.C. v. Bulgaria, judgment of 4 December 2003.
10. *Z and Others v. the United Kingdom*, judgment of 10 May 2001.
11. Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, judgment 12 October 2006.
12. *Siliadin v. France*, judgment of 26 July 2005.
13. *X and Y v. the Netherlands*, judgment of 26 March 1985.
14. *Scozzari and Giunta v.* Italy, judgment of 13 July 2000.

9. The CDDH recalls the Convention on Action against Trafficking in Human Beings, opened for signature in Warsaw on 16 May 2005. This instrument recognises that all forms of trafficking in human beings constitute a violation of human rights and calls upon member states to fight against it and to protect its victims, women, men or children, whatever form of exploitation they are submitted to, be it sexual exploitation, forced labour or servitude.

10. Finally, the CDDH wishes to recall the work, which is nearly concluded by the European Committee on Crime Problems (CDPC) relating to a future convention on the protection of children against sexual exploitation and abuse. This instrument aims at tackling issues related to prevention, protection and penal law relating to fighting all forms of sexual exploitation and abuse concerning children. It therefore, for the most part, replies to the request made by the Parliamentary Assembly in paragraph 3 of its recommendation.

15. See *mutatis mutandis, Assenov v. Bulgaria*, judgment of 28 October 1998 (Article 3), and *H.M. v. Turkey*, judgment of 8 August 2006 (Article 8).
16. *Camenzind v. Switzerland*, judgment of 16 December 1997.

Appendix 2 – Opinion of the European Committee on Legal Co-operation (CDCJ) on Parliamentary Assembly Recommendation 1778 (2007)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1778 (2007) on child victims: stamping out all forms of violence, exploitation and abuse, the Committee of Ministers decided to communicate it to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 30 April 2007. The CDCJ examined the recommendation and decided to submit to the Committee of Ministers its comments relating to those provisions, which in its view are of concern to the CDCJ.

2. The CDCJ welcomes the call of the Parliamentary Assembly and of the Committee of Ministers to member states to sign and ratify international and European legal instruments relating to the protection of children and in particular supports doing so in respect of the Council of Europe Convention on Contact concerning Children (ETS No. 192), which is currently signed by 13 Council of Europe member states without ratification, and is in force since 1 September 2005 in respect of four member states.

3. The CDCJ welcomes the importance attached by the Parliamentary Assembly to the fight against all forms of violence, exploitation or abuse of children and draws the attention of the Committee of Ministers to a number of legal instruments adopted by the Council of Europe, in particular the European Convention on the Exercise of Children's Rights (ETS No. 160). This convention aims at protecting the best interests of children by providing a number of procedural measures to allow children to exercise their rights, and to protect them from cruel or degrading treatment.

4. The latter convention also facilitates the implementation of the United Nations Convention on the Rights of the Child. At present 11 Council of Europe member states are parties to the European Convention, while another 13 affixed their signatures, not followed by ratifications. The CDCJ would like to stress the need for inviting member states to sign and ratify this convention as well, if they have not already done so.

5. The CDCJ notes that at their 27th Conference, the European Ministers of Justice adopted Resolution No. 1 on victims of crime, whereby they "invite the Committee of Ministers to entrust the European Committee on Legal Co-operation, in cooperation with other competent bodies of the Council of Europe, to study the question of civil, administrative and other remedies to be made available to victims of crime with a view to reducing the risk of secondary victimisation and contributing to their rehabilitation from crime suffered and adequate compensation for damage sustained". In this resolution, particular attention is paid to the needs of categories of particularly vulnerable victims, including children, when seeking civil, administrative or other remedies designed to protect their interests, in particular provision of information on procedures, simplified procedures, legal aid and advice before, during and after completion of civil, administrative or other procedures.

6. In compliance with this resolution, the CDCJ, through the Group of Specialists on Remedies for Crime Victims (CJ-SVICT), is planning to analyse legislation and practices of member states concerning civil, administrative and other remedies available to victims of crime and identify good practices, *inter alia*, which meet the specific needs of vulnerable victims such as children with a view to making proposals to the Committee of Ministers for possible follow-up action.

7. In the view of the CDCJ, note should also be taken of the ongoing work within the Council of Europe as regards preparation of the convention on the protection of children against sexual exploitation and sexual abuse. Completion of this work should significantly contribute to the regional and international fight against violence, exploitation and abuse of children.

8. Despite the fact that the CDCJ fully supports the objectives put forward by the Parliamentary Assembly in its Recommendation 1778 (2007), and considering the ongoing work in this field within the Council of Europe, it takes the view that it is premature at this stage to initiate drafting a new, legally binding instrument in this field.

9. However, the feasibility of elaborating an appropriate instrument, containing specific measures to facilitate the implementation of the United Nations Convention on the Rights of the Child could be examined.

10. The CDCJ would like to bring to the attention of the Committee of Ministers that the theme of the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote, Spain) covered the issue of access to justice for vulnerable groups, including children, which could lead to future work in this field by the CDCJ and could take into account the proposal in paragraph 9 above.